STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1714

In re the Custody of P. K. M. S. and K. D. S.,
Jeremy Melvin Selin,
Respondent,

vs.

Tiah Joy Laubach,
Appellant.

Filed September 3, 2019
Affirmed
Florey, Judge

Carlton County District Court
File No. 09-FA-15-1203

Katrina M. Viegas, Gerlach, Beaumier, Trogdon, Orman, Hurd & Viegas, Duluth, Minnesota (for respondent)

Jill I. Frieders, O'Brien & Wolf, L.L.P., Rochester, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Smith, Tracy M., Judge; and Florey, Judge.

U N P U B L I S H E D O P I N I O N

FLOREY, Judge

In this parenting dispute, appellant-mother argues that respondent-father's motion to modify parenting time was a de facto custody-modification motion, which should not have been granted without an evidentiary hearing and a finding of endangerment, and that

the district court erred by awarding father 50 percent parenting time without adequately considering the children's best interests. Because respondent-father's parenting-time increase did not change the custodial arrangement or the children's primary residence, and because the district court adequately addressed the best-interests factors, we affirm.

FACTS

Appellant Tiah Joy Laubach is the mother and respondent Jeremy Melvin Selin is the father of two minor children: P.K.M.S., born in 2008, and K.D.S., born in 2011. In June 2015, respondent-father petitioned to establish custody and parenting time for the children. In September 2015, the parties reached a mediated settlement agreement, which was adopted by the district court (hereafter, "settlement order").

The parties agreed to joint legal custody, with appellant-mother receiving sole physical custody, subject to respondent-father's right to "reasonable and liberal parenting time," as further set out in the settlement order. Respondent-father received "parenting time with the children three overnights out of every eight day period." This schedule was based upon his eight-day work schedule. The parties agreed to split holidays, taking into account respondent-father's work schedule, and each party received two seven-day blocks of vacation time with the children. Under the settlement order, each party received "a right of first refusal" to exercise parenting time if the other parent could not.

In July 2016, respondent-father moved to modify the parenting-time schedule. He sought four overnights for every eight-day period. The district court denied the motion, concluding that it was in the best interests of the children to continue under the existing arrangement.

In September 2018, respondent-father again moved to modify the parenting-time schedule. He sought to change the existing schedule "to an every other week schedule." He also sought a specific holiday schedule. He attested that he was seeking the modification because his children had "repeatedly asked to spend more time with [him]." He also attested that the existing parenting-time schedule "no longer reflect[ed] either parties' work schedules," and asserted that "the week on/week off schedule would greatly reduce the amount of time the children are in child care."

Appellant-mother opposed the modification. She asserted that it was inappropriate for respondent-father to rely on the children's preferences, given their ages. She also asserted that the parties' settlement-order schedule gave respondent-father "approximately 37.5 percent of the children's available time," and there was "no good reason why a substantial increase in parenting time would be in the best interests of the children." She proposed an alternative parenting-time schedule that retained "almost exactly the same amount of parenting time that [they] agreed to" in the settlement order.

The parties appeared for a motion hearing. Counsel for respondent-father argued that a substantial change in circumstances had occurred since the settlement order because respondent-father "no longer work[ed] night shifts at his employer," and "[h]e [was] now on a standard Monday-through-Friday daytime-only kind of schedule." Counsel for respondent-father noted that respondent-father had "between 37 and 40 percent parenting time on paper," and argued that the requested "minor bump up" of ten to twelve percent in parenting time did not constitute a de facto request to modify custody. Counsel for appellant-mother argued that the requested modification, "going from 37 percent to 50

percent," constituted a "substantial modification," which required "an evidentiary hearing."

In October 2018, the district court filed an order granting respondent-father's motion to modify the parenting-time schedule to "an every-other-week schedule." The court found that respondent-father had "three of eight parenting time days scheduled around his prior overnight work schedule," and that he was seeking "parenting time of seven days out of 14 days, which [was] an increase from [the] previously ordered six days out of 16 days." The court found that respondent-father's requested parenting-time increase was "not a substantial change that would modify the custodial arrangements," and under the totality of the circumstances, the "request for equal parenting time [was] not a de facto motion to modify custody." The court based its decision, in part, on "the increased age of the children and the fact that they've had regular parenting time with their father during the school week," and concluded that the slight modification to the parenting-time schedule was in the children's best interests. This appeal followed.

D E C I S I O N

I.

We first determine whether respondent-father's motion was a de facto custody-modification motion or a parenting-time-modification motion. The distinction is important because a different standard applies for each. *See In re Custody of M.J.H.*, 913 N.W.2d 437, 440 (Minn. 2018) (noting the two applicable standards). The parties agree that the determination of the applicable statutory standard in this case presents a question of law, subject to de novo review.

The modification of a custody order is governed by Minn. Stat. § 518.18 (2018). A district court may not modify a custody order unless it finds "that a change has occurred in the circumstances of the child or the parties and that the modification is necessary to serve the best interests of the child." *Id.* (d). Additionally, at least one of the circumstances listed in the statute must be present, for example, "the child's present environment endangers the child's physical or emotional health or impairs the child's emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child." *Id.* (d)(iv). If the party establishes a prima facie case for custody modification, "the district court must then hold an evidentiary hearing" on the motion. *M.J.H.*, 913 N.W.2d at 440.

A modification of parenting time that does "not change the child's primary residence" is appropriate when it "would serve the best interests of the child." Minn. Stat. § 518.175, subd. 5(b) (2018). The best interests of the child are evaluated using 12 factors, which address issues such as the effect a proposed change would have on a child's physical and emotional needs and development. *See* Minn. Stat. § 518.17, subd. 1 (2018).

Appellant-mother asserts that respondent-father's motion was a custody-modification motion because it sought to both increase his parenting time and change the children's daily care and routine. Respondent-father argues that he did not move for a custody modification because he requested only a small increase in parenting time. In *M.J.H.*, the supreme court set forth the standard for resolving this dispute:

> [W]hen determining whether a motion to modify parenting time is a de facto motion to modify physical custody for purposes of deciding whether the endangerment standard

> applies, a court should consider the totality of the circumstances to determine whether the proposed modification is a substantial change that would modify the parties' custody arrangement. The factors considered may include the apportionment of parenting time, the child's age, the child's school schedule, and the distance between the parties' homes, but these factors are not exhaustive.

913 N.W.2d at 443.

Under the totality of the circumstances presented here, respondent-father's motion was not a de facto custody-modification motion. It did not substantially change or modify appellant-mother's award of sole physical custody because it did not substantially change her daily care and control of the children. *See* Minn. Stat. § 518.003, subd. 3(c) (2018) (defining the term "physical custody and residence" as "the routine daily care and control and the residence of the child"); *M.J.H.*, 913 N.W.2d at 441-42 (analyzing whether father's proposed parenting-time change modified mother's routine daily care and control of child).

Respondent-father's proposed every-other-week parenting-time schedule represented, at most,[1] an approximately 12.5 percent increase from his 37.5 percent of parenting time under the settlement order. While the proposed increase to 50 percent is an amount equal to appellant-mother's parenting time, the supreme court has articulated that this alone does not constitute a custody modification. *M.J.H.*, 913 N.W.2d at 442. The children have a good relationship with both parents and were not subject to additional travel

[1] The district court's findings indicate that respondent-father was receiving 37.5 percent of parenting time under the settlement order. Indeed, under the settlement order, respondent-father received parenting time three out of every eight days, equaling 37.5 percent, but he also received two one-week blocks of parenting time. As a result, his parenting time was closer to 40 percent.

for parenting-time exchanges.[2] *See M.J.H.*, 913 N.W.2d at 442 (finding that increased travel between father's home and child's school would "necessarily affect daily routines and scheduling matters"). Respondent-father "had regular parenting time" during the school week under the existing parenting-time arrangement, so the district court's slight modification to the parenting-time schedule did not substantially alter the children's routine during the school week. The children also spent weeklong blocks with respondent-father under the vacation schedule set forth in the settlement order. Under these circumstances, respondent-father's motion, seeking a slight increase in parenting time, was not a de facto custody-modification motion.

Appellant-mother also argues that respondent-father's proposed modification altered the primary residence of the children. A modification of parenting time cannot "change the child's primary residence." Minn. Stat. § 518.175, subd. 5(b). In *M.J.H.*, the supreme court did not reach the issue of whether the modification, proposed by the father, would change the child's primary residence because the court determined that the father's motion was a de facto custody-modification motion, and therefore the requirements of the parenting-time-modification statute were inapplicable. 913 N.W.2d at 439, 441.

We have previously determined that a child's primary residence is plainly and unambiguously "the principal dwelling or place where the child lives." *See Suleski v. Rupe*, 855 N.W.2d 330, 335 (Minn. App. 2014). Accordingly, a change in a child's primary residence, as referenced in Minn. Stat. § 518.175, subd. 5(b), plainly refers to a change

[2] At oral argument, counsel for appellant-mother conceded that the parties live "fairly close" to each other and to the school.

causing the child's principal dwelling to lose its status and become a dwelling of lesser or secondary importance. Such a change is certainly related to parenting time, but "identifying a child's primary residence is a broader inquiry than simply identifying which parent has a majority of parenting time," and involves consideration of all relevant factors. *In re Custody of M.J.H.*, 899 N.W.2d 573, 578 (Minn. App. 2017), *rev'd on other grounds*, 913 N.W.2d 437.

Here, the modification did not reduce the children's time at appellant-mother's home to below 50 percent, and there is no indication that it diminished the status of her home as the principal residence. Under the circumstances, the modification of parenting time did not change the children's primary residence. *See Suleski*, 855 N.W.2d at 335.

II.

Appellant-mother asserts that, even if respondent-father's motion was properly deemed a parenting-time-modification motion, the district court was required to find that the modification was in the children's best interests and consider "the children's changing developmental needs," and the district court failed to do so.

A district court's parenting-time decision is subject to its broad discretion and will not be reversed unless there has been an abuse of that discretion. *See Hansen v. Todnem*, 908 N.W.2d 592, 597 (Minn. 2018). Under section 518.175, subdivision 5(b), a parenting-time modification must serve the best interests of the children, including the children's "changing developmental needs." *See* Minn. Stat. § 518.175, subd. 5(b). Section 518.17 lists 12 factors bearing on the best interests of the child that the court must consider "for

purposes of determining issues of custody and parenting time." Minn. Stat. § 518.17, subd. 1(a). The factors are as follows:

> (1) a child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's needs and development;
>
> (2) any special medical, mental health, or educational needs that the child may have that may require special parenting arrangements or access to recommended services;
>
> (3) the reasonable preference of the child, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;
>
> (4) whether domestic abuse . . . has occurred in the parents' or either parent's household or relationship . . . ;
>
> (5) any physical, mental, or chemical health issue of a parent that affects the child's safety or developmental needs;
>
> (6) the history and nature of each parent's participation in providing care for the child;
>
> (7) the willingness and ability of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;
>
> (8) the effect on the child's well-being and development of changes to home, school, and community;
>
> (9) the effect of the proposed arrangements on the ongoing relationships between the child and each parent, siblings, and other significant persons in the child's life;
>
> (10) the benefit to the child in maximizing parenting time with both parents and the detriment to the child in limiting parenting time with either parent;
>
> (11) except in cases in which domestic abuse . . . has occurred, the disposition of each parent to support the child's relationship with the other parent and to encourage and permit frequent and continuing contact between the child and the other parent; and
>
> (12) the willingness and ability of parents to cooperate in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving disputes regarding any major decision concerning the life of the child.

See id.

A district court generally "must make detailed findings on each of the factors . . . based on the evidence presented and explain how each factor led to its conclusions and to the determination of . . . parenting time." *Id.*, subd. 1(b)(1). But, in the context of *modification* of an existing parenting-time order, detailed findings on each of the factors are not required, and a district court's findings are sufficient if they address the *relevant* factors, and any required factor or factors referenced in the applicable modification subdivision under section 518.175. *See Hansen*, 908 N.W.2d at 599 (concluding that specific findings on all of the best-interest factors were not required in determining whether a modification under section 518.175, subdivision 8, was appropriate).

Here, the district court made findings on the specific factor listed in section 518.175, subdivision 5(b), the children's "changing developmental needs." The court noted "the increased age of the children and the fact that they've had regular parenting time with their father during the school week," as well as the fact that "[t]he children are both now school age," and "have a good relationship with both parents." The court also noted that the parenting-time arrangement under the settlement order caused confusion for the children because they often did not know "which bus they should take home from school."

In addition to addressing the children's changing developmental needs, the district court sufficiently addressed the relevant best-interest factors in section 518.17, subdivision 1(a). The aforementioned findings, and other findings, address factor one, concerning the children's needs and development, factor six, concerning the parent's participation in providing care, factor seven, concerning the willingness and ability of the parents to

provide care, factor eight, concerning changes to home, school, and community, and factor nine, concerning the ongoing relationships between the children and the parents. The district court also addressed factor ten, concerning the maximization of parenting time, by specifically finding that a week-on/week-off schedule would "maximize the parenting time with each parent." Lastly, the district court addressed factor twelve, concerning the willingness and ability of parents to cooperate in raising the children, finding that the schedule under the settlement order required "frequent interaction and cooperation by the parties," which the district court found to be "in short supply." While the district court could have included more detailed findings, it did not abuse its broad discretion.

Affirmed.